

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 35408/35409

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 413
	)	
Plaintiff-Respondent,	)	Filed: April 6, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
RYAN LEE BACHE,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Ronald E. Bush, District Judge.

Order revoking probation and requiring execution of unified four-year sentence with two-year determinate term for driving under the influence of alcohol, repeat offense, affirmed; order denying Rule 35 motion, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sarah E. Tompkins, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rosemary Emory, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge; GUTIERREZ, Judge;  
and GRATTON, Judge

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PER CURIAM

In 2005, Ryan Lee Bache pled guilty to driving under the influence of alcohol, repeat offense. I.C. § 18-8004, 18-8005(7). The district court imposed a unified four-year sentence with a two-year determinate term, but after a period of retained jurisdiction, suspended the sentence and placed Bache on probation.

In 2007 Bache again pled guilty to driving under the influence of alcohol, repeat offense, I.C. §§ 18-8004, 18-8005(7). Bache admitted to violating the terms of his probation. The district court consequently revoked probation and ordered execution of the original sentence on Bache's 2005 DUI and imposed a unified five-year sentence with a two-year determinate term on

Bache's 2007 DUI. The district court ordered these sentences be served concurrently. Bache filed a Rule 35 motion for reduction of sentence in both cases, which the district court denied.

Bache appeals, contending that the district court abused its discretion by revoking probation and ordering execution of the original sentence and by denying his Rule 35 motion.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

Sentencing is also a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

When we review a sentence that is ordered into execution following a period of probation, we do not base our review upon the facts existing when the sentence was imposed. Rather we examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *Adams*, 115 Idaho at 1055, 772 P.2d at 262; *State v. Grove*, 109 Idaho 372, 373, 707 P.2d 483, 484 (Ct. App. 1985); *State v. Tucker*, 103 Idaho 885, 888, 655 P.2d 92, 95 (Ct. App. 1982). Applying the foregoing standards,

and having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation or in ordering execution of Bache's original sentence without modification.

A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Upon review of the record, including any new information submitted with Bache's Rule 35 motion, we conclude no abuse of discretion has been shown.

Therefore, the district court's order revoking probation and directing execution of Bache's previously suspended sentence and the order denying Bache's Rule 35 motion are affirmed.